

ORIGINAL

FILED

04/30/2019

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 18-0110

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 18-0110

MONTANA ENVIRONMENTAL INFORMATION  
CENTER and SIERRA CLUB,

Plaintiffs and Appellees,

v.

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Defendant and Appellant,

and

WESTERN ENERGY COMPANY,

Defendant/Intervenor and Appellant.

FILED

APR 30 2019

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana  
ORDER

Appellants Montana Department of Environmental Quality (DEQ) and Western Energy appeal from a First Judicial District order invalidating Western Energy's MPDES Permit renewal, effective November 1, 2012, and modified September 14, 2014.

The District Court held that DEQ reclassified the C-3 waters as ephemeral, that only the Board of Environmental Review had statutory authority to do so, and that re-classification required a public hearing and DEQ's preparation of a use attainability analysis, which did not occur. This Court requires no additional briefing on this issue.

The District Court further found:

As to DEQ's conclusion that monitoring of [20%] of outfalls is sufficient, there is only a conclusory statement regarding soil types, run-off, and treatment. There is a distinct lack of scientific analysis supporting the conclusion that the remaining [80%] of the outfalls previously deemed necessary no longer will be used as 'representative' of the large-scale activity of the mine. There seems to be as much deference by DEQ to the logistical issues of monitoring raised by [Western Energy] as there are to the need to monitor the affected state waters.

The District Court concluded: "Given the lack of analysis present in the record as to DEQ's decision to reduce the monitoring of outfalls, the decision is unsupportable."

Having reviewed the parties' briefs on appeal, the District Court order, the administrative record, and hearing oral argument, this Court deems it appropriate to obtain additional briefing regarding monitoring of Rosebud Mine's outfalls.

Therefore,

IT IS ORDERED that Plaintiffs and Appellees Montana Environmental Information Center and Sierra Club, and the Defendants and Appellants DEQ and Western Energy, shall prepare, file, and submit additional simultaneous briefing on or before June 3, 2019, on the following issues:

1. The legal basis underlying the use of representative monitoring of mining outfalls in precipitation-driven events in Montana.
2. With specific reference to data in the administrative record, address DEQ's decision that the 20 outfalls listed in Table 17 represented Rosebud Mine's 82 active outfalls.
3. As to the modifications of the permit in 2014, address the data in the record and the arguments before the Board of Environmental Review that either support or contradict the District Court's decision to invalidate the permit as modified in 2014. Additionally, the parties should elaborate on Western Energy's argument regarding this Court's ability to consider the 2014 Modification.

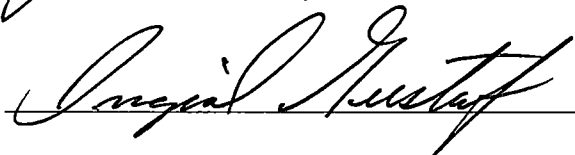
IT IS FURTHER ORDERED that each brief shall be limited to 7,500 words.

The Clerk is directed to provide a copy of this Order to all counsel of record.

DATED this 30<sup>th</sup> day of April, 2019.

  
Chief Justice





Orin M. Sank

James J. Smith

Robert Smith

John R. Smith

Justices